

Dear Grattan

Thanks for your letter about the 'well-being power' or ... perhaps its better named the 'ill-feeling power'

You are much too trusting and not sufficiently cynical to see the problem here! J

Do feel free to pass this reply to Keith Lomax for his view. We can only act as friends to provide back up to your own independent legal advice.

The whole point of passage over land (to allow the bailiffs to destroy the 'illegal' Dale Farm site) is that if one of the local farmers was so minded – and I suspect that you could find one of them who is – they could simply grant Constant the right to pass and repass over their land for as long as they wanted. They could do this by means of a 'bare licence' or even charge them for the privilege 'a contractual licence' – no doubt Constant would then reclaim the price from the Council.

The point is that there is no need to purport to use the s2(1) LGA 2000 power (if the power extends to that) to get access over local farm land – I am sure one of the farmers would be only too pleased to grant the necessary licence.

The whole point of the Decision is to give purported legal authority to BDC and Constant to use legal yard owners' property – ie Oak Lane – to gain access to the Dale Farm site. Look carefully at the four paragraphs beginning 'The Solicitor to the Council' down to Conclusion. Then imagine – she gets a memo from the Leader of the Council saying that access via Oak Lane is reasonably necessary to facilitate execution of an enforcement notice. This is backed by a letter from Constant.

She is then given a letter by Constant to say that passage down Oak Lane will be limited to one day and that Constant undertakes to repair any damage. Action will be taken to keep noise to a minimum, safety barriers will be erected to ensure that no-one strays onto Oak Lane etc etc. The interference with Patrick's right over his property is minimal – one day's disruption – the alleged 'public good' is the removal of the Travellers' site – personally I think it's a 'public bad' but there you go.

The other point is –the final paragraph – the Council has said that it will compensate (Patrick) for his losses, if any. Provided Constant say they will take care no one from the Council will force them to, because the damage for them failing to take care will be minimal. So what to do?

Can the s2(1) power be used by this means .. Delegated power?
Probably, but it may be worth challenging that by JR – ask Keith. But, if you win on the procedural point they will just take the decision properly

Can the s2(1) power be used for that purpose? - this is much more doubtful, but I cannot find a decision on it. I simply cannot believe that there is a right to enter private property conferred by the s2(1) power. JR seems like a way forward – a Declaration that the power is ultra vires

Could Patrick get an injunction to prevent Constant entering his land? Well, he has got a reasonable fear that Constant will enter his land and use his land to do dangerous and illegal things. He is concerned that the residents of Dale Farm will sue him for allowing or suffering things to be done on his land which amount to criminal offences against the residents.

Suppose that a child is run over on his land, or an accident occurs on his land to one of Constant's expensive vehicles. He is prepared to negotiate a licence with Constant to allow them to pass over his land (the sum of £100M per hour comes to mind!!! But DON'T say that!!) provided that they covenant to do nothing illegal on his land, to indemnify him against any and all losses and to pay him a licence fee.

If they pass over his land without buying a licence he will sue them

Patrick should now start to enforce the rights of an owner over his land. He should put up a sign saying 'private property' and 'the owner reserves the right to charge for a licence to pass over this land' One day he should charge everyone (including Dale Farm Residents) 1p for a ticket to pass over the land – don't put up a sign saying how much it is – say that the amount of the charge is discretionary – he can give the money collected to the Housing Association at the end of the day. Perhaps he can then write to Constant and BDC setting out his tariff – (I have indicated the sort of sum above)

See what Keith says re this lot

Btw its not Prof – its Dr. I don't have a Chair, I'm a Reader (one step down from Prof)

bob

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